(3)

IN THE HIGH COURT OF JUDICATURE AT BILASPUR CHHATTISGARH

W.P. NO. 1067 OF 2001

Petitioner: Nohar Singh s/o Chedu Ram Dhobi, UP Sarpanch Gram panchayat Chibarra , Tah. & Distt. Mahasamund (Chhattisgarh)

V/s

Respondents: 1) Smt. Mittila Bai Sarpanch , Gram panchayat Chibarra, Tah. & Distt. Mahasamund

2) Collector, Mahasamund , Distt. Mahasamund

3) Sub- Divisional Officer Competent Officer (panchayat) Mahasamund

4) Shri K.R. Bhagat Additional Tahsildar Pithora, presiding Officer, Gram panchayat Chibarra Tah. & Distt. Mahasamund (C.G.)

P.R. No. 1134 Presented by Shri F.S. Khare Adv. dt. 21.6

WRIT PETITION UNDER ARTICLE 226/ 227 OF THE CONSTITUTION OF INDIA.

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(42)

आदेश पत्रक

मामला क्रमांक W.P. 1067/2001 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

12/8/2004

Smt. Renu Kocher, counsel for the Petitioner.

Shri Ravish Verma, counsel for the Respondent No.1.

Shri Bhaskar Pyasi, Panel lawyer for the State/Respondents No. 2 and 3.

Heard.

The petitioner Nohar Singh, who is Up Sarpanch of Gram Panchayat – Chibarra, Tahsil and District- Mahasamund has preferred this writ petition under Article 226/227 of the Constitution of India against the order dated 4.6.2001 passed by the Collector, Mahasamund in Panchayat Case No. 37/B-121 of 2000-2001, arising out of the order dated 12.4.2001 passed by the Additional Tahsildar/Competent Authority, Pithora on the no-confidence motion.

The Respondent No.1 is Sarpanch of Gram Panchayat, Chibarra, Tahsil and District- Mahasamund. A 'no confidence motion' was moved against the Respondent No.1 and the meeting of panchas of Gram Panchayat Chibrra for consideration of motion was fixed on 12.4.2001. The Gram Panchayat consists of total 19 panchas. Said meeting was held in the presence of Shri K. R. Bhagat, Additional Tahsildar in which out of 19 panchas, 17 panchas participated out of which 13 panchas voted in favour of the 'no-confidence motion' and 4 panchas voted against the 'no-confidence motion'. After voting the Additional Tahsildar held that the first condition of Section 21(1) of the Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 (for short the 'Act') was satisfied whereas the second condition was not satisfied, therefore the 'no confidence motion' was termed as 'failed'.

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(43)

आदेश पत्रक

मामला क्रमांक 1067/01 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित (12)	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Against the order dated 12.4.2001 passed by the Additional Tahsildar on the proceeding of 'no-confidence motion', the petitioner filed Panchayat Case No. 37/B-121 of 2000-2001 before the Collector, Mahasamund. Vide order dated 4.6.2001 learned Collector affirmed the order passed by the learned Additional Tahsildar.

I have heard learned counsel for the parties.

Section 21 of the Act provides for No-confidence motion against Sarpanch and Up-Sarpanch. Sub-Section (1) of Section 21 provides that "On a motion of no-confidence being passed by the Gram Panchayat by a resolution passed by majority of not less than three fourth of the panchas present and voting and such majority is more than two third of the total number of Panchas constituting the Gram Panchayat for the time being, the Sarpanch or Up-Sarpanch against whom such motion is passed, shall cease to hold office forthwith."

A bare reading of the aforesaid provision reveals that there are two requirement of this section:-

(i) Majority of not less than three forth of the panchas present and voting.

(ii) Such majority is more than two third of the total number of Panchas constituting the Gram Panchayat for the time being.

Learned counsel for the petitioner submits that as the strength of the Gram Panchayat was 19 and on the date of 'no-confidence motion' 17 panchas were present and participated in voting; out of them 13 voted in favour of 'no confidence motion' and 4 voted against the 'no confidence motion', therefore as per the requirement of **first part** of Section 21(1) of

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आदेश पत्रक

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विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित (37)	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

the Act, 3/4th majority passed the resolution in favour of the 'no-confidence motion'. She further submits that the **second** requirement of the provision is that the majority of more than 2/3rd of the total number of panchas constituting the Gram Panchayat for the time being; and as per this requirement 2/3rd of the total panchas of 19 comes to 12.66, whereas 13 panchas voted in favour of the 'no- confidence motion' which is more than 2/3rd therefore this requirement was also satisfied. Thus, the order of the Tahsildar as well as the Collector are not in conformity with the requirement of Section 21(1) of the Act.

On the other hand learned counsel for the respondents argued that 2/3rd of total 19 panchas even though comes to 12.66, it has to be read as 13 and in order to meet the requirement of **second part** of Section 21(1) of the Act it was necessary that 14 panchas should have voted in favour of the 'no confidence motion', then and then only the 'no-confidence motion' could have been treated as 'passed'.

As far as the first part of Section 21(1) of the Act is concerned, there is no dispute between the parties. The only dispute is about second part of the above provision.

On the relevant date i.e. 12.4.2001 the Gram Panchayat was consisting of 19 panchas and 2/3rd of the same comes to 12.66. In order to treat the resolution as 'passed', the number of panchas who voted in favour of the 'no confidence motion' should be 12.66 and in this case 13 panchas voted in favour of the 'no confidence motion', therefore in my opinion the requirement of second part of the provision was satisfied, as the 13 number is more than the required number of 12.66. In order to

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विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित (47)	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

satisfy this requirement even the fraction of member cannot be ignored i.e. in this case .34 was more than the required number of 12.66 i.e. 2/3rd of the total strength of the panchas of the Gram Panchayat. As such, the order passed by the Tahsildar as well as the impugned order passed by the learned Collector is not in accordance with the requirement of sub-section (1) of Section 21 of the Act, which cannot be sustained and liable to be set aside.

In view of the above discussion, the impugned order dated 4.6.2001 passed by the Collector, Mahasamund in Panchayat Case No. 37/B-121 of 2000-2001, arising out of the order dated 12.4.2001 passed by the Additional Tahsildar/Competent Authority, Pithora on the no-confidence motion are quashed; they are directed to act accordingly.

With the above observations and directions this petition stands disposed of.

In view of the above order M(W)P No. 1241/2002 and I.A.No. 866/2004 stand disposed of.

Certified copy, as per Rules.

Sd/-
L.C.BHADOO
Judge

Thakur

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